

P-421/C-90-1184; P-999/C-93-90 ORDER APPROVING SETTLEMENT,
REQUIRING NOTICE TO CUSTOMERS AND FILING OF TARIFFS, AND
SOLICITING COMMENTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
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Dee Knaak
Norma McKanna

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint
of AT&T Communications of the
Midwest Inc. Concerning
Excessive Rates for Access
Services Provided by U S West
Communications, Inc.

ISSUE DATE: February 16, 1993

DOCKET NO. P-421/C-90-1184

In the Matter of the Commission
Solicitation of Comments
Regarding Access Charges

DOCKET NO. P-999/C-93-90

ORDER APPROVING SETTLEMENT,
REQUIRING NOTICE TO CUSTOMERS
AND FILING OF TARIFFS, AND
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PROCEDURAL HISTORY

I. PROCEEDINGS TO DATE

On December 31, 1990, AT&T of the Midwest, Inc. (AT&T) filed a Complaint against U S West Communications, Inc. (USWC) together with a Conditional Notification of Price Reductions with the Commission. In its Complaint, AT&T alleged that USWC's intrastate Carrier Common Line Charge (CCLC) was excessive in comparison to 1) what AT&T pays Bell Operating Companies (BOCs) in other state jurisdictions, 2) what AT&T pays USWC in other state jurisdictions, and 3) USWC's interstate CCLC rate. In further support of its claim that USWC's CCLC rate was excessive, AT&T alleged that the intrastate and interstate CCLC rates of the larger independent companies (United, Contel, GTE, and Vista) all had a closer relationship to one another than did USWC's intrastate and interstate CCLCs.

For relief, AT&T requested that USWC reduce its intrastate CCLC charge to a level equal to its current interstate CCLC rate in two phases. In Phase 1, USWC would reduce its intrastate CCLC to the current average of the four major Minnesota companies' intrastate CCLC rates: GTE-Minnesota, United, Contel, and Vista. AT&T estimated that this would reduce its access charge expense by approximately \$14 million annually at current traffic levels. AT&T also recommended a Phase 2 reduction, in which USWC's intrastate CCLC rate would be reduced to its interstate level, effective upon the expiration of the USWC's incentive regulation plan, now scheduled for August 1, 1994.

On January 30, 1991, AT&T informed the Commission that discussions between the parties were ongoing and asked the Commission to defer any formal action on the Complaint for 60 days.

On March 27, 1991, AT&T filed a similar letter requesting that the Commission stay any action in this matter until such time as one or both parties inform the Commission that additional discussions are not likely to minimize the litigation of issues.

On April 10, 1992, AT&T filed a Notice of Motion, Motion, Amended Complaint, and Memorandum in Support of Motion with the Commission. AT&T's Amended Complaint differs from the original Complaint in four areas:

1. New CCLC Calculations Since the initial complaint was filed, the average CCLC of the four major Minnesota companies' intrastate CCLC rates (GTE-Minnesota, United, Contel and Vista) decreased. As a result of this and increased call volumes, the annual reduction requested by AT&T increased from \$14 to \$19 million.
2. Allegations of "Unreasonable" Rates In the amended Complaint, AT&T included allegations that the USWC rates are not only "excessive" but "unreasonable" and "unjustly discriminatory," and not "fair and reasonable" as required by statute.
3. AT&T Price Decreases The Amended Complaint deleted a section of the initial Complaint that had notified the Commission that AT&T intended to reduce its intrastate switched toll rates by approximately 13 percent if it were granted full Phase 1 relief.
4. Income Neutrality The Amended Complaint deleted reference to income neutrality for USWC.

On May 18, 1992, the Commission issued its Order Requiring Answer And Establishing Comment Period. The Commission served the Order on all interexchange carriers, all parties to USWC's incentive regulation proceeding¹, and all parties to the proceeding in which USWC's access charges were initially established.² In the Order, the Commission invited comments on AT&T's Complaint, AT&T's Motion, USWC's Response, and on the Appropriate procedural treatment of the issues in this proceeding.

¹ In the Matter of Northwestern Bell Telephone Company's d/b/a U S West Communication's, Proposed Incentive Regulation Plan, Docket No. P-421/EI-89-860.

² In the Matter of a Summary Investigation into Intrastate Switched Access Charges Proposed by Northwestern Bell Telephone Company for its Minnesota Customers, P-421/CI-85-352.

The Commission provided USWC 20 days from the date of the Order to respond to AT&T, and interested persons 20 days after USWC's filing to file comments.

On January 12, 1993, three parties, USWC, AT&T, and the Minnesota Department of Public Service (the Department) filed a Joint Motion For Approval of Offer of Settlement And Request to Close Docket with Commission.

On January 14, 1993, the Commission solicited comments from all persons on the service list regarding the proposed Settlement.

On January 29, 1993, USWC filed comments on the proposed Settlement. USWC was the only party filing comments on the proposed Settlement.

On February 9, 1993, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

II. THE PROPOSED SETTLEMENT

The proposed Settlement Agreement contains four interrelated components:

1. provisions concerning USWC's CCLC;
2. provisions concerning USWC's rate changes for other services;
3. provisions concerning AT&T's rate changes;
4. provisions concerning comments for further proceedings.

The proposed Settlement includes a \$ 17.8 million reduction to USWC's CCLC rates based on 1991 traffic volumes. Additionally, AT&T would file revised schedules for its intrastate Message Telecommunications Service (MTS) reducing its MTS prices by the full amount of the USWC access charge reduction.

As part of the agreement, the parties stated that it was appropriate to keep USWC income neutral as a result of these price changes. To achieve income neutrality for USWC, the parties agreed that the rates for USWC's directory assistance (DA) should be adjusted. Specifically, the agreement calls for a reduction in the monthly free call allowance from five DA calls to two and an increase in the per call DA charge from \$.25 to \$.35 per call.

The reduction in USWC's CCLC rates will result in a \$17.8 million income reduction for USWC. However, the resulting toll rate

reductions by AT&T and other interexchange carriers (IXCs) will cause stimulation in toll calls and USWC's access minutes of use. As a result of this stimulation, the parties expect USWC's CCLC income reduction to be reduced to \$10.7 million.

If simply applied to 1991 call volumes, the DA increase would result in a revenue increase of \$10.1 million. However, the rate increase will cause repression in the number of DA call made by consumers. As a result of this repression, the parties expect that USWC will experience a revenue increase due to the higher DA rates of \$6.9 million. Also, it is expected that USWC will experience a cost savings of \$3.8 million due to reduced call volume, yielding an income increase due to the higher directory assistance rates of \$10.7 million.

Regarding the Phase 2 relief requested in AT&T's Amended Complaint (reduction of USWC's intrastate CCLC rate to its interstate level, effective upon the expiration of the USWC's incentive regulation plan, now scheduled for August 1, 1994) the parties simply recommended that the Commission solicit comment from interested entities to be filed by June 1993 whether an investigation of access charges should be undertaken and, if so, the scope of issues to be addressed in such an investigation.

III. COMMISSION'S STANDARD OF REVIEW

Minn. Stat. § 237.076, subd. 2 (1992) states:

The Commission may accept a settlement upon finding that to do so is in the public interest and is supported by substantial evidence.....

In reviewing the parties' proposal, therefore, the fact that the parties have reached consensus, commendable as that is, does not eliminate the Commission's responsibility to find that their agreement is in the public interest, is supported by substantial evidence, and that its proposed rates are fair and reasonable.

IV. COMMISSION REVIEW

A. Supporting Evidence

As part of its proposed Settlement Agreement, the parties have supplied a detailed factual basis for their settlement with respect to each major aspect of their agreement. In addition, USWC separately provided additional information in support of the proposed Settlement. In these filings, the Commission finds substantial evidence supporting the following findings:

1. USWC's Switched Access Costs and Rates

USWC's intrastate CCLC rates at issue in this matter are an element of its switched access services offered pursuant to Commission-approved tariffs and subject to the incentive regulation plan approved in Docket No. P-421/EI-89-860.

USWC's CCLC is the highest priced rate element within the switched access category. USWC's rates for the CCLC are significantly higher in comparison to the charges AT&T pays in other state jurisdictions and are among the highest in the country among all Bell Operating Companies (BOCs). USWC's intrastate CCLC is greater in comparison to USWC's costs and to USWC's CCLC rates in other USWC states.

USWC's intrastate CCLC rates are greater than the charges approved by the Commission for many other local exchange companies (LECs) in Minnesota. Some of these LECs have decreased their charges since the last time USWC's switched access charges were adjusted.

While denying that its intrastate CCLC rates were excessive or unlawful, USWC agreed that its CCLC rates were set at a high level and that the agreed CCLC rate reduction would result in fair and reasonable rates and bring its rates into closer alignment with the rates charged generally by other LECs.

2. AT&T Toll Rates

AT&T's short-haul toll rates do not currently recover access costs. The price schedule provided by AT&T would move these rates closer to their costs. The price reductions that AT&T proposed in response to USWC's rate reduction would leave AT&T approximately income neutral.

3. Appropriateness of Income Neutrality for USWC

AT&T's Amended Complaint attacks one major element of an integrated rate design. USWC argued that any effort to change the CCLC rates alone must be rejected or be done on an income neutral basis due to the incentive regulation plan. The Department stated that the spirit of the Commission's Order adopting the Incentive Plan made income neutrality appropriate given the magnitude of the rate reductions under consideration.

4. USWC's Directory Assistance Costs and Rates

USWC's current DA rates are significantly below incremental cost and significantly below the DA rates charged by the vast majority of other Minnesota LECs, Minnesota interexchange carriers (IXCs), and telephone companies in most other USWC states and BOC states. Even with the decrease in the number of monthly free DA calls and

price increase, DA revenues will not fully recover the costs of the service. Finally, a large majority of USWC's residential and business customers make two or fewer DA calls per month and, therefore, will not be affected by the changes.

5. Net Impact of Settlement Rates on USWC Income

The toll rate changes agreed to by AT&T and the expected similar rate reductions from other IXCs will stimulate toll calls made by consumers, causing an increase in USWC's switched access minutes of use. The increase in income to USWC due to this additional traffic will partially offset the reduction in income due to the reduction in its CCLC rates, resulting in a CCLC income loss of \$10,772,381. At the same time, the income increase in its DA rates will reduce the number of DA calls made by consumers, limiting the income increase due to the higher DA rates to \$10,772,255.

B. Benefits of the Settlement

There are a number of public benefits that would derive from approving this Settlement. AT&T's intrastate toll customers would receive an immediate reduction in their rates for intrastate toll service, as AT&T has proposed to reflect the entire access reduction from USWC in lower intrastate toll rates. It is reasonable to expect that competitive forces would lead to toll reductions of similar magnitude by other IXCs.

Settling the Complaint at this point would also avoid costly and time consuming proceedings, potentially including some or all of the following:

1. resolution of the pending motions of AT&T and USWC by the Commission;
2. referral to an Administrative Law Judge (ALJ) for contested case hearings;
3. party briefs before an ALJ;
4. ALJ recommendation to the Commission;
5. exceptions to the ALJ's Report;
6. oral argument before the Commission followed by Commission deliberation and order;
7. motions for reconsideration; and
8. judicial review.

The contested case process and possible judicial review could require over a year to complete, thereby substantially delaying customer experience of any toll rate reductions, if any were achieved at all through the adversarial process. In contrast, approval of the Proposed Settlement would provide an immediate and actual reduction in most AT&T's customer's bills without such delays.

V. COMMISSION ACTION

The major components of this proposed Settlement, of course, are its rate changes. The Commission finds that the rate changes proposed in this Settlement are fair and reasonable.

1. The reductions in USWC's CCLC are appropriate. They bring USWC's CCLC rates into closer alignment with the rates charged generally by other LECs while continuing to cover the cost of providing the switched access services.
2. The concurrent increase in USWC's DA rates is, in general, consistent with the Commission's reluctance to change one element of an integrated rate design in a way that would jeopardize the balance attained in the adopted design. Moreover, the increase in DA rates is justified in itself based on a comparison of those rates with those of other LECs and the fact that the current rates are below incremental cost.
3. In view of the cost reduction that AT&T will receive as a result of the reduction of USWC's CCLC rates, it is appropriate that AT&T has agreed to flow these savings on to its toll customers. This is certainly a welcome development and a critical ingredient of this Settlement. The Commission has reviewed the rates that AT&T has proposed to achieve this flow through and finds that they are fair and reasonable.

Based on a thorough review of the record, the Commission finds that the proposed Settlement is in the public interest. Every issue is supported by substantial evidence, thorough reasoning, and sound public policy. Accordingly, the Commission will issue this Order approving the Settlement and implementing its provisions.

In approving the Settlement and issuing this Order, the Commission is providing (1) lower USWC CCLC charges that are just and reasonable, (2) lower aggregate statewide toll prices that are just and reasonable, (3) rates for another USWC service (DA) that are just and reasonable and not as far below cost, and (4) a process and schedule for considering whether further investigation of access charges is appropriate.

ORDER

1. The proposed Offer of Settlement is approved.
2. Effective March 19, 1993, USWC shall reduce its Carrier Common Line Charge (CCLC) rates and increase Directory Assistance (DA) rates as indicated in the Offer of Settlement.
3. Within 10 days of this Order, USWC shall file revised tariff pages reflecting the rates approved above in Ordering Paragraph 2.
4. USWC shall notify its customers of the rate changes approved in this Order with the first customer bills reflecting these rate changes.
5. AT&T shall change its intrastate toll rates [Message Telecommunications Service (MTS)] rates effective March 19, 1993 as proposed by AT&T and as outlined in Proprietary Exhibit B of the Offer of Settlement.
6. Within 10 days of this Order, AT&T shall file price lists reflecting the MTS rates approved above in Ordering Paragraph 5.
7. AT&T shall notify its customers of the MTS rate changes approved in this Order by publishing newspaper notices 30 days prior to March 19, 1993, the effective date of the new price lists.
8. Comments on access charges in Minnesota, as discussed in this Order, are hereby solicited. Entities wishing to file comments with the Commission shall do so under Docket No. P-999/C-93-90 and by June 1, 1993. Interested entities' comments should address but should not be limited to the following questions regarding the scope of a possible investigation:
 - a) Should an investigation of access charges be undertaken?
 - b) As part of an access charge investigation, should the Commission investigate the CCLCs rates and access charges of USWC and all other Minnesota LECs?
 - c) What is the appropriate cost recovery relationship between access charge rates and the rates for other services?

- d) Are there more appropriate methods of recovering non-traffic sensitive (NTS) costs than the CCLC?
 - e) How could income neutrality be maintained, if deemed appropriate, if access charges are reduced in the future?
9. This docket, P-421/C-90-1184, is hereby closed.
10. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)